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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,084	02/17/2004	Donald E. Weder	8404.028	9512

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EXAMINER
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PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/780,084

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/17/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of Species-II (claims 15-54) in the reply filed on 1/11/05 is acknowledged.

Claims 1-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 1/11/05.

### *Specification*

The abstract of the disclosure is objected to because the subject matter of the last sentence is not consistent with the elected species.

Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities:

Paragraph [0001] should be updated to reflect the patent status of application 10/325,103.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

**Claims 15, 16, 18, 20-34, 35, 36, 38 and 40-54** are rejected under

35 U.S.C. 102(a), as being anticipated by Landau (US 5,235,782)1993.

Note: This application is cited as being a continuation of 10/325,103, and a continuation-in-part of 07/940,930.

As 07/940,930 is directed to a mold formed cover and not a flattened and paneled sleeve as cited in the instant application, the instant application is not afforded the benefit of the 07/940,930 filing date as the earliest effective filing date, rather the 5,572,851 patent filing date is tentatively considered the earliest effective filing date.

Regarding **claim-1**:

Landau teaches the sleeve of the instant claim; the method as cited, would be readily apparent to one of ordinary skill in the art.

Specifically, Landau depicts a tapered sleeve in a flattened condition wherein upper and lower ends, and connected panels and sides are readily apparent as cited.

Landau further depicts an inner (16) and outer layer (44) as cited.

Regarding **independent claim-35**:

The discussion above regarding claim-1 is relied upon as encompassing the sleeve of the instant claim.

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Regarding repeating **claims 16 and 36**:

The discussions above regarding the independent claims are relied upon.

Landau discloses fabricating the sleeve as a plastic laminate with an outside layer (44) and an inside (16) layer, (column-4, first paragraph).

Regarding repeating **claims 18 and 38**:

The discussions above regarding the independent claims are relied upon.

Landau depicts a closed lower end as cited.

Regarding repeating **claims 20 and 40**:

The discussions above regarding the independent claims are relied upon.

Landau depicts a cut-out (18) readable on a ventilation hole as cited.

Regarding repeating **claims 21 and 41**:

The discussions above regarding the independent claims are relied upon.

Landau depicts an upper detachable portion as cited.

Regarding repeating **claims 22 and 42**:

The discussions above regarding the independent claims are relied upon.

Landau recites a plastic material in claim-8, as cited.

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Regarding repeating **claims 23 and 43**:

The discussions above regarding the independent claims are relied upon.

Landau discloses fabricating the sleeve as a plastic laminate with an outside layer (44) and an inside (16) layer, (column-4, first paragraph);

Landau further discloses that the sleeve can be fabricated in a manner of ways (column-3, line-7). The Examiner contends that disposing a bonding material as cited would be encompassed by the laminate teaching of Landau.

Regarding repeating **claims 24 and 44**:

The discussions above regarding the independent claims are relied upon.

Landau discloses that the sleeve can be fabricated in a manner of ways (column-3, line-7). The Examiner contends that the connection as cited, is encompassed by the teaching of Landau.

Regarding repeating **claims 25 and 45**:

The discussions above regarding the independent claims are relied upon.

Landau discloses that the sleeve can be fabricated in a manner of ways (column-3, line-7). The Examiner contends that the connection as cited, is encompassed by the teaching of Landau.

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Regarding repeating **claims 26 and 46**:

The discussions above regarding the independent claims are relied upon.

Landau depicts in Figure-2 an upper end having a non-linear upper edge.

Regarding **claims 27-34 and 47-54**:

The discussions above regarding the independent claims are relied upon.

Landau discloses printing informative material, and decorations directly on the surface of the sleeve (column-4, first paragraph).

The Examiner contends that the decorative limitations as cited in the instant claims are encompassed by the teaching of Landau.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 17, 19, 37 and 39** are rejected under 35 U.S.C. 103(a),

as being unpatentable over Landau (US 5,235,782) 1993

in view of Applicant's Section-3 Prior Art Statement as filed.

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Regarding repeating **claims 17, 37 and 19, 39:**

The discussions above regarding the independent claims are relied upon.

Landau depicts a closed lower end, and is silent as to an open lower end or drainage hole as cited.

Applicant's Section-3 prior art statement discloses open bottom plant sleeves are old in the art, and the Examiner considers a drainage hole as reading on an open lower end as cited.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Landau to have an open lower end, as cited, for the well-known advantages of that feature.

### ***Double Patenting***

A Terminal Disclaimer was filed with the instant Application, which anticipates a double patenting rejection directed to the non-elected species. The TD is therefore not applicable, and since the claims of the continuing data do not recite a sleeve as cited in the elected species, no double patenting rejection is made.



***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Charbonneau teaches the sleeve of the instant independent claims except for the layered panels. The sleeve of the instant independent claims would be obvious over Charbonneau in view of Landau.

***Terminal Disclaimer***

The terminal disclaimer filed on 2/17/04 has been recorded.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu., Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Francis T. Palo*

Francis T. Palo  
Examiner  
Art Unit 3644